SHER TREMONTE LLP

August 28, 2016

VIA ECF (UNREDACTED VERSION FILED UNDER SEAL)

The Honorable P. Kevin Castel
United States District Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *United States v. Gary Hirst*, 15 Cr. 643(PKC)

Dear Judge Castel:

We write on behalf of our client, Gary Hirst, to respectfully request an *in limine* ruling on the admissibility of certain evidence. On August 22, 2016, Jared Galanis, the last remaining co-defendant set for trial in this case, pled guilty. Since then, the government has produced prior statements of thirteen proposed witnesses and over eight thousand pages of exhibits.[1] These materials clearly show that the government plans to transform a straightforward case about the discrete series of events that involved Mr. Hirst into an unwieldy and confusing multi-week trial about multiple frauds, including numerous superfluous witnesses and thousands of pages of documents that have nothing to do with the charges the government seeks to prove against Mr. Hirst. Mr. Hirst's *in limine* requests should be granted to ensure, among other things, against the confusion and waste of the jury's time that will inevitably ensue if the government proceeds in accordance with its current trial plan.

Specifically, Mr. Hirst respectfully requests that the Court issue an order as follows:

- Pursuant to Fed. R. Evid. 401 and 403, precluding the government from introducing evidence of two frauds charged in the Superseding Indictment that did not involve Mr. Hirst and concern no defendant still remaining in the case, and further precluding evidence of any wrongdoing about which the government does not allege that Mr. Hirst has knowledge.

[1] The witnesses' prior statements were produced, pursuant to 18 U.S.C. § 3500, on August 22, 2016. On August 24, 2016, the government produced an unindexed CD of the exhibits. Since that date, we have received additional § 3500 material, as well as new *Brady* and *Giglio* disclosures.

- [redacted]

- Pursuant to Fed. R. Evid. 602 and 701, precluding the government's fact witnesses from opining about, among other things, the legal requirements applicable to Gerova's public disclosures, the law and rules applicable to Gerova's corporate governance, the powers and procedures applicable to Gerova's board of directors under Caymans law, and the lawfulness of any actions taken by Gerova's board of directors (or by any individual officer or director of Gerova) under Caymans law.

- Pursuant to Fed. R. Evid. 404 and 602, precluding the testimony of Shant Chalian, whose testimony lacks a basis in personal knowledge and includes impermissible propensity evidence.

- Pursuant to Fed. R. Evid. 401 and 403, precluding the testimony of Nazan Akdeniz, because it would offer impermissible and vague opinion testimony that the account opening and the transfer of shares were suspicious.

- Precluding a letter addressed to the New York Stock Exchange, dated January 28, 2011, for lack of foundation and pursuant to Fed. R. Evid. 403.

- [redacted]

We also provide the Court and the government with a list of the government's proposed exhibits to which we currently intend to object at trial.[2]

FACTUAL BACKGROUND

As the Court is aware, Mr. Hirst was charged by Indictment on September 21, 2015 with securities fraud and wire fraud related to Gerova Financial Group, Ltd. ("Gerova"), an international reinsurance company. The Indictment alleges three separate frauds. Mr. Hirst is alleged to have played a role in the first scheme, which involved the use of a foreign nominee, Ymer Shahini, to facilitate Jason Galanis's fraudulently obtaining control over a block of shares of Gerova stock (the "foreign nominee fraud"). Indictment ¶¶ 14-15; 25-34; 36-40. The second scheme, in which Mr. Hirst played no role, involved opening brokerage accounts in Shahini's name and colluding with corrupt investment advisers to purchase Gerova shares in exchange for payouts from the Shahini accounts and the use of matched trading to inflate the price of Gerova stock (the "pump-and-dump scheme"). *Id.* ¶¶ 17, 41-67. The third scheme, a wholly separate investment adviser fraud from 2007 to 2011, was orchestrated by Jared Galanis and a corrupt investment adviser named James Tagliaferri (the "investment adviser fraud"). *Id.* ¶¶ 78-97. Mr. Hirst was not even charged in the investment adviser fraud.

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[2] We make these objections for the convenience of the Court and the government, but do not waive our right to make additional objections at trial.

Jason Galanis, his father John Galanis, and Gavin Hamels (one of the investment advisers) all pled guilty to the Indictment and, on August 10, 2016, the Grand Jury returned a Superseding Indictment against Mr. Hirst, Jared Galanis, Derek Galanis, and Shahini. The accusations against Mr. Hirst are contained in a handful of paragraphs detailing the foreign nominee fraud, in which the government alleges that he (1) conspired with Jason Galanis and others to cause Gerova to enter into a fraudulent consulting agreement with Shahini, Superseding Indictment ¶¶ 20-24; (2) authorized the issuance of 5.3 million ordinary shares of Gerova stock to Shahini based on a fraudulent warrant agreement and attorney opinion letter, *id.* ¶¶ 25-30; and (3) failed to disclose the existence of the consulting agreement, the warrant agreement, and the issuance of the shares to Gerova's Board of Directors, the Amex Exchange, and the New York Stock Exchange, *id.* ¶¶ 31-35.

The Superseding Indictment contains no allegation that Mr. Hirst was aware of or involved in the pump-and-dump scheme. Although the indictment alleges that \$2.62 million in proceeds from the sale of the improperly issued shares was transferred to "a bank account associated with an entity controlled by" Mr. Hirst, *id.* ¶ 60(c), it is undisputed that those funds were actually transferred in June 2010, before any of the matched trades that the government alleges caused the inflation of Gerova's stock price.[3] The Superseding Indictment also includes charges (Counts Five through Eight) relating to the investment adviser fraud which, as noted, do not involve Mr. Hirst. *See id.* ¶¶ 73-88.

Following the return of the Superseding Indictment, Derek Galanis pled guilty to the substantive charges against him and Jared Galanis pled guilty to misprision of a felony. Shahini has not appeared. Trial is currently scheduled to commence on September 12, 2016 with Mr. Hirst as the sole defendant. The government produced § 3500 material on August 22, 2016, the bulk of which relates to the investment adviser fraud and other transactions not charged in the Superseding Indictment that post-date Mr. Hirst's involvement with Gerova. Mr. Hirst received an unindexed copy of the government's exhibits on August 24, 2016, which total over eight thousand pages.

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[3] The parties are in agreement that the funds, which were alleged to have been transferred to an account of an entity that is purportedly associated with Mr. Hirst, were subsequently transferred out of that account on the same day into another account; and, also on the same day, were transferred out of that account to a bank account in Lausanne, Switzerland. The government has informed Mr. Hirst that it does not know the identity of the beneficiary of the bank account in Switzerland.

ARGUMENT

I. The Court Should Preclude the Introduction of Evidence on the Pump-and-Dump Scheme, the Investment Adviser Fraud, and Any Other Wrongdoing About Which Mr. Hirst Has No Knowledge

The Court should preclude evidence of the investment adviser fraud and the pump-and-dump scheme, because the evidence relating to these schemes is not probative of Mr. Hirst's innocence or guilt and, if admitted, will lead to jury confusion and unfair prejudice. Fed. R. Evid. 401, 403. Not only is the evidence irrelevant and risks confusing and/or misleading the jury, but presentation of this evidence will also needlessly prolong the trial, transforming a relatively straightforward case about Mr. Hirst's state of mind in connection with a handful of events into a lengthy and complex proceeding. Indeed, fully ***half*** of the government's witnesses can offer testimony only about the pump and dump or investment adviser fraud, and have no information about the foreign nominee fraud, which is the only scheme in which Mr. Hirst is alleged to have participated. Also, thousands of pages of exhibits relate solely to the pump and dump and investment adviser schemes. Especially given the volume of the proposed evidence on these topics, and because neither the pump and dump or investment adviser schemes is relevant to Mr. Hirst's guilt or innocence as to the crimes charged, the proposed exhibits and testimony on these subjects should be precluded.

A. *The Investment Adviser Fraud Scheme*

As mentioned above, Mr. Hirst is not charged in the investment adviser fraud, which the Superseding Indictment expressly charges as a separate conspiracy from any of the events relating to Gerova that involve Mr. Hirst. It is axiomatic that the government must prove the conspiracy charged in the indictment. Consequently, proof of a separate and distinct conspiracy "is not proof of the single, overall conspiracy charged in the indictment." *United States v. Tramunit*, 513 F.2d 1087, 1107 (2d Cir. 2007). Accordingly, any evidence concerning the investment adviser fraud should be precluded. Inclusion of the investment adviser fraud in the government's case-in-chief is also confusing and prejudicial, as it is highly likely to lead the jury to speculate that Mr. Hirst may have breached a duty of loyalty to investors, when the government does not allege that he was an investment adviser or had any such duty.

The following witnesses and exhibits relate to the investment adviser fraud:

- Alan Cole will testify that his parents invested money with James Tagliaferri, identified in the Superseding Indictment as CC-2, and lost substantial assets.[4]

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[4] Although Cole testified in the Tagliaferri criminal case that his mother reported a sharp decline in assets in February 2011, he told the government that his mother

- Kathy Kram will testify that her parents invested with Tagliafferi and lost two-thirds of the value of their investments in early 2011.

- The government proposes to admit photographs of Cole and Kram's deceased relatives, some posed with children and young grandchildren.

- The government proposes to admit hundreds of pages of brokerage account statements of the Tagliaferri investors (Government's Exhibits 390-93).

- Government expert Arthur Laby will testify concerning, among other topics, "investment adviser duties."

Such evidence, in addition to having no probative value as to Mr. Hirst, will be highly prejudicial. Cole and Kram's family members are innocent victims of a fraud perpetrated by certain co-defendants, but without Mr. Hirst's knowledge. Tagliaferri himself was tried and convicted in this district in 2014, and both Cole and Kram testified at that trial. Were the Court to permit these individuals to testify at this trial, and admit sympathetic pictures of their families and voluminous brokerage account statements, the jury will likely mistakenly infer that these individuals are victims of Mr. Hirst's conduct, or that there are other similar victims. Such inferences would create unfair prejudice, given that there is no evidence of such victims or any effort by Mr. Hirst to dump stock and swindle investors. To the contrary, Mr. Hirst held his own Gerova shares throughout the time period alleged in the Indictment (and in fact still holds them) and separately pursued efforts to prevent "short sellers" from undermining Gerova's stock price.

Laby's expert testimony regarding the duties of investment advisers also will confuse the jury, inasmuch as Laby will suggest that Mr. Hirst breached a duty of loyalty akin to that of an investment advisor, when in fact Mr. Hirst did not serve as an investment advisor to any individual investors in Gerova securities. Accordingly, whatever minimal probative value these witnesses offer, if any, will be substantially outweighed by the danger of unfair prejudice. Both the proposed witnesses and the corresponding brokerage account exhibits should be precluded.

B. *The Pump and Dump Scheme*

The pump and dump scheme alleged in the Superseding Indictment comprises a complex series of coordinated activities to distribute Shahini's shares to four separate brokerage firms based on a variety of misrepresentations (by defendants who have all pled), a scheme to manipulate the market to inflate the price of Gerova shares by colluding with corrupt investment advisers (who are also no longer in the case), and an intricate series of match trades, involving sell orders corresponding with phone calls from

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"received a statement that showed a huge decline in value" in 2008 and 2009 – before any of the relevant conduct allegedly involving Mr. Hirst.

a member of the Galanis family, who instructed certain corrupt investment advisers to coordinate trades. Although the pump-and-dump scheme is charged as part of the single conspiracy with the foreign nominee fraud, the Superseding Indictment contains no allegation (and, based on the Rule 16 and § 3500 material, it is clear that there is no evidence) that Mr. Hirst had any knowledge of or involvement in that scheme. In fact, the only allegation in the Superseding Indictment that suggests any connection between Mr. Hirst and the pump-and-dump scheme is the allegation that "[o]n or about June 22, 2010, $2,620,000 of the proceeds from the sale of Gerova shares in one of the SHAHINI Accounts was transferred by wire to a bank account associated with an entity controlled by GARY HIRST." Superseding Indictment ¶ 60(c). But that alleged transfer took place before virtually all of the activities comprising the pump-and-dump scheme and before all of the match trades that allegedly caused the inflation of Gerova's stock. *Id.* ¶ 37. Accordingly, even on the government's theory, Mr. Hirst's role in the conspiracy ended prior to the pump-and-dump scheme.

Evidence of the pump-and-dump scheme is irrelevant to the government's case against Mr. Hirst, and its presentation will result in substantial wasted time and jury confusion. The § 3500 material makes this apparent. For example:

- Gavin Hamels will testify about his coordination during August and September 2010 with Jared Galanis (or someone impersonating Jared Galanis) to buy a set amount of Gerova stock at a set price, but will testify that he "never met GARY HIRST" and "never spoke to HIRST."

- Nazan Akdeniz, an employee at the brokerage firm Roth Capital, will testify that Roth Capital received the Shahini shares, but ultimately declined to accept them. Initially, she told the government that she may have talked to Mr. Hirst on one or two occasions, but that on those occasions she may have spoken instead to Jason Galanis or Michael Hlavsa, and not Mr. Hirst; Ms. Akdeniz later told the government that, although she had "heard of" Mr. Hirst, she knew nothing about his role and never communicated with him.[5]

- Alex Montano will testify that his brokerage firm, CK Cooper, accepted the Shahini shares; however, he spoke only with Jason and Jared Galanis regarding the Shahini account and did not interact with Mr. Hirst.

- Government expert Paul Hinton will testify regarding "matched trading analysis," including complex demonstrative charts like the ones contained in paragraphs 50, 51, and 62 of the Superseding Indictment.[6] There is no allegation that Mr. Hirst effected or knew of any of the matched trades alleged in the Superseding Indictment.

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[5] For reasons detailed more fully below, even if the government is permitted to present evidence on the pump-and-dump scheme, this witness's testimony should be precluded in its entirety.

- The government's proposed exhibits appear to include account statements from over half a dozen different bank statements intended to show the movement of funds; thousands of pages of "blue sheets" showing every trade of Gerova stock; and hundreds of pages of call records and cell-site data purportedly showing matched trades.

Testimony regarding the pump-and-dump scheme will be lengthy and complex. It will add significant time to the trial and force the jury to sit through a prolonged presentation of evidence about a scheme that did not involve Mr. Hirst, and about which the government is not alleging that Mr. Hirst had any knowledge. Given the volume of the government's proposed evidence on this topic – in terms of pages, it comprises more than half of the exhibits – if this testimony and corresponding exhibits are permitted, Mr. Hirst will be put in the untenable position of having to prove his *lack* of knowledge of the pump-and-dump scheme, an impermissible shifting of the government's burden onto the defendant. Accordingly, evidence concerning the pump-and-dump scheme should be precluded.[7]

Finally, the § 3500 material is replete with testimony about other ventures involving the Galanis family and activities surrounding Gerova after Mr. Hirst left the company. The government has not alleged – and the evidence does not show – that Mr. Hirst had knowledge of any wrongdoing related to these other transactions. Evidence concerning them will plainly confuse the jury and risk severe prejudice to Mr. Hirst by associating him with other bad acts of co-defendants who are not on trial. Moreover, based on the number of witnesses and the volume of exhibits, it is clear that the majority of the trial – as much as two-thirds – will relate to these collateral matters. Consuming so much of the jury's time with the needless presentation of evidence on collateral matters should not be permitted.

II. [redacted]

[redacted]

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6 Mr. Hirst has not had an opportunity to view the charts that Hinton will present. Although these charts were attached to emails that the government produced as part of its § 3500 material, the government has refused to produce the charts to the defense.

7 To the extent the government seeks to introduce the mere fact that proceeds from sales of the Shahini shares went (temporarily) to an account held by an entity allegedly associated with Mr. Hirst, that can easily be accomplished by stipulation.

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[redacted]

[redacted]

[redacted]

[redacted]

III. The Court Should Preclude Fact Witnesses from Opining on Legal Requirements

The § 3500 material contains extensive speculation from numerous fact witnesses about what the legal requirements that apply to the operation of a Cayman Islands corporation, the reporting requirements for various agreements, when Board approval is required for stock issuances, and so forth, without any knowledge or basis on which to opine. For example:

- Shant Chalian, who is not a Bermuda lawyer and does not appear to have any expertise in Bermuda (or Cayman Islands) law, told the government that Board ratification "may be required under Bermuda law."

- Jack Doueck, former CEO of Gerova, stated that he "would have wanted the relationship [between Jason Galanis and Shahini] disclosed," but provides no basis for any disclosure requirement.

- Albert Hallac, CEO of Weston Capital Management and not an employee or officer of Gerova, stated that Jason Galanis "was not authorized to be involved" with Gerova.

- Michael Hlavsa, the Gerova CFO, stated that a warrant issuance "of th[e] size" that was issued to Shahini was "something that would have been – that the board would have been required to approve," but cites no legal basis for his unfounded opinion.

- Doueck and others also state, without foundation, that the value of the shares that were transferred to Shahini was material and would have "made a difference."

- Hlavsa also stated that he "believes the directors were required to approve share issuances."

- Marshall Manley, also a former CEO of Gerova, stated that he "thinks [the warrant agreement] should have went [sic] before the board, but Gary Hirst could have done it himself, MM thinks this is inappropriate because he didn't know about it." He does not explain why Mr. Hirst would have been required to inform him.

Given the complex, precise nature of securities regulations, which will have to be explained to the jury in the Court's charge and from experts, permitting these lay witnesses to speculate as to legal requirements is improper. None of these individuals has been proposed as an expert, and none is qualified to testify as an expert. Their opinion testimony will only confuse and mislead the jury.

IV. The Court Should Limit Shant Chalian's Testimony to Matters Within His Personal Knowledge and Preclude Propensity Testimony Regarding Mr. Hirst

During the relevant period, Hodgson Russ LLP served as Gerova's outside counsel. Although Hodgson Russ billed time for several attorneys to Gerova, Steven Weiss was at the time the senior Partner of the firm assigned to the matter. Weiss sent and signed the engagement agreement, supervised all work performed for Gerova by other associates and partners of the firm, and performed the lion's share of the work himself. For reasons unknown to the defense, the government has opted not to call Weiss and instead to call a junior partner, Shant Chalian. However, Chalian's prior statements reveal that he has virtually no personal knowledge about Gerova. He stated that Weiss did most of the work, there were a "lot of convos [he was] not involved in," and that much of what he learned about the company was reported by Weiss. In the absence of relevant personal knowledge, Chalian's testimony is likely to be riddled with speculation and hearsay. For example, he states that he "thinks" Weiss was trying to "clean . . . up" issues at the company. He further states that the company had "[o]ther warrants were issued that weren't supposed to," but does not explain what these are (and apparently was never asked). Finally, he states that the firm ultimately withdrew from its representation of the company based on "a number of irregularities" and unspecified "concerns" that they had, and they opted for a "quiet" withdrawal. To permit such unfounded testimony, especially from an attorney, would allow conviction by innuendo.

Even more troubling, Chalian makes several statements that appear to constitute impermissible propensity evidence. He states that there were "[t]imes where GH would create legal documents" and that "GH did things on his own." Such testimony serves no legitimate purpose and should be precluded. *See* Fed. R. Evid. 404(a).

V. The Court Should Preclude the Testimony of Nazan Akdeniz

The government proposes to call Nazan Akdeniz, a Roth Capital employee, to testify that her brokerage firm declined to accept the Shahini shares. As an initial matter, it is not clear how the fact that one brokerage firm initially rejected the Shahini shares is relevant to scheme by which the government alleges that the shares were successfully deposited in brokerage firms and then sold. Indeed, it appears that Akdeniz's testimony will focus on why Roth considered the Shahini shares were problematic, though she cannot articulate any concrete basis for the firm's decision and there is no evidence that Mr. Hirst had knowledge of the circumstances that gave rise to its concerns.

For example, Akdeniz told the government that Roth closed its Shahini account because it "seemed really odd to receive shares directly from transfer agent into brokerage account"; that the law firm that sent Roth an opinion letter regarding the shares "did not look reputable"; that she was "confused" by the fact that Jared Galanis sent the opinion letter and did not understand why he did; that "usually" it would be company counsel who would send such a letter; that Roth did not proceed with receiving the shares because it "didn't feel comfortable;" that Akdeniz was "surprised [the] company wasn't more angry re denial of account"; and that Akdeniz did "not understand[ ] completely" the transaction.[8]

Akdeniz's testimony will thus consist largely of vague suggestions that the circumstances surrounding the account opening and transfer of the Shahini shares were somehow suspicious, without any concrete evidence of a problem with the account, let alone wrongdoing. In any event, these circumstances were not known to Mr. Hirst, and whatever concerns Akdeniz may have had are completely irrelevant to Mr. Hirst's state of mind. Especially in a case where the government is likely to seek a conscious avoidance instruction, admitting her testimony would mislead the jury into believing that something unspecified was wrong with the Shahini shares, and that it somehow had something to do with Mr. Hirst, which it did not. Such confusion would be exacerbated by the fact that Ms. Akdeniz did not have any direct dealings with Mr. Hirst. Accordingly, this evidence should be excluded.

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[8] Notably, although Akdeniz was responsible for filing Suspicious Activity Reports, she did not file one in this instance.

VI. There is No Foundation to Admit the January 2011 Gerova Letter to the New York Stock Exchange

In paragraph 25, the Superseding Indictment alleges:

> [I]n or about January 2011, Gary Hirst, the defendant, caused Gerova to issue a letter to the NYSE containing material misrepresentations concerning, among other things, the true ownership and control of the 5.3 million shares of Gerova stock issued pursuant to the Shahini Warrant Agreement.

The government proposes to admit a copy of a January 28, 2011 letter on Gerova letterhead addressed to the New York Stock Exchange ("NYSE") (Exhibit 589), which would otherwise constitute pure hearsay, presumably for the fact that the letter was submitted to the NYSE and purports to bear the signature of Gary Hirst. Further, we assume the government will ask the jury to infer that Mr. Hirst was responsible for the statements in the letter, and that certain of the statements contained in the letter are false. As they relate to the warrant agreement at issue in this case, the letter states as follows:

> In March 2010, prior to Mr. Galanis's employment by Gerova Advisors LLC, the company we agreed to issue to Mr. Galanis a three year warrant entitling the holder to purchase up to 2.2 million of our ordinary shares at an exercise price of $37.50 per share. The warrant was issued in lieu of cash payment of a fee that we had previously agreed to pay to Mr. Galanis or his assigns in consideration for his facilitating our acquisition of the assets of the Wimbledon Funds in January 2010 and his introduction of Keith R. Harris and the opportunity to acquire Seymour Pierce. We value the warrant at $2.2 million, or $2.00 per warrant share, which was the average of the closing prices of our publicly traded warrants during the 30 days prior to March 29, 2010 (adjusted for the 1:5 reverse stock split).

But the government lacks a proper foundation to admit this letter. To the extent it seeks to attribute the statements in the letter to Mr. Hirst, there is ample evidence in the Rule 16 discovery that the letter, and in particular the statements at issue, were not made by him, but rather by others, and that the letter was written in reliance on the representations of others. While presumably the government is not seeking to admit the letter for the truth of the statements contained in the letter – indeed it will attempt to establish that the statements in the letter are false and were known to be false by Mr. Hirst – it does seek to admit the letter to establish that the letter is a statement by Mr.

Hirst.[9] Given the multiple drafts circulated among various officers and board members of Gerova, and the involvement of lawyers in the drafting and submission of the document, there is insufficient evidence to conclude that the letter is in fact attributable to Mr. Hirst. Absent a further showing by the government that the statements in the letter are Mr. Hirst's statements, admitting the document into evidence would be unfairly prejudicial and simply confuse the jury.[10]

VII. [redacted]

[redacted]

[redacted]

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[9] To the extent the government seeks to further admit the document to establish consciousness of guilt – *i.e.* Mr. Hirst's alleged knowledge of the foreign nominee fraud – its reasoning is circular. The document only constitutes consciousness of guilt if in fact the jury assumes Mr. Hirst's guilt. Such a circular basis for admission of a key document offends due process, and even if the document is admitted, the government should not be allowed to argue that the fact of the document establishes that Mr. Hirst had a guilty conscience.

[10] To the extent the letter is admitted, the Court should nevertheless preclude as inadmissible hearsay Exhibits 556-588, 590-593, documents relating to internal discussions at the New York Stock Exchange ("NYSE") during its consideration of Gerova's January 28, 2011 letter to the Exchange, and communications between NYSE and Gerova other than the letter itself. Such communications are irrelevant and unnecessary to show what the government alleges, namely, that Gerova sent a letter to the NYSE that contained material misrepresentations. Further, these communications contain hearsay allegations about Gerova from the media in reciting the motivation for NYSE's request. We are willing to stipulate that the NYSE made a request to Gerova for information.

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VIII. The Court Should Preclude Certain Government Exhibits

The defense intends to object to the admission of the following exhibits at trial. We provide the following list to apprise the Court and the government in advance of our anticipated objections to their admission into evidence.

- Exhibit 50, Mr. Hirst's *Miranda* warning and waiver of rights form, should be excluded as irrelevant and prejudicial. We are willing to stipulate that the signature on the form is Mr. Hirst's.

- Exhibits 100-104, mug shots of Mr. Hirst and the co-defendants, should be excluded as irrelevant and prejudicial.

- Exhibits 150-152, photographs of the deceased victims of the investment adviser fraud, should be excluded as irrelevant and prejudicial.

- Exhibits 390-393, brokerage account statements from Charles Schwab of the Cole and Kram accounts, should be excluded as irrelevant.

[redacted]

- Exhibits 403-409, Barry Feiner's Valley National Bank account statements, should be excluded as irrelevant, because they relate solely to the pump-and-dump scheme.

- Exhibits 680-681, letters from Billy Crafton to, respectively, Hilsden Subsidiary and Ryan Braun, both concerning non-Gerova stock, should be excluded as irrelevant and inadmissible hearsay.

- References in Exhibits 1025, 1029, and 1037 to a "Swiss bank account" and "Switzerland" should be excluded as more prejudicial than probative and likely to confuse the jury.

- Exhibits 1260-1262, various emails, should be excluded as irrelevant and likely to produce jury confusion.

Respectfully submitted,

/s/

Michael Tremonte
Justine A. Harris
Noam Biale
SHER TREMONTE LLP
80 Broad Street, 13th Floor
New York, NY 10004
(212) 202-2600
mtremonte@shertremonte.com

cc: AUSA Brian Blais (via email)
AUSA Rebecca Mermelstein (via email)
AUSA Aimee Hector (via email)